

HB 79

HD 1

TESTIMONY BY **KALBERT K. YOUNG**
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 79, H.D. 1

March 17, 2011

RELATING TO STATE FUNDS

House Bill No. 79, H.D. 1 requires agencies to report to the 2012 Legislature on their non-general funds and repeals, terminates, or closes certain revolving and trust funds that were identified for repeal, termination, or closure in the Legislative Auditor's Report No. 10-09. More specifically, as of June 30, 2011, the following funds are repealed, terminated or closed: 1) Travel Agency Recovery Fund; 2) Pulama I Na 'Opio O Hawaii Trust Fund; 3) Collections Revolving Funds; 4) Federal Maximization Revolving Funds; 5) Hawaii Public Housing Authority Administration Revolving Fund; 6) Kahikolu 'Ohana O Wai'anae Project Trust Fund; and 7) Teacher's Housing Operating Fund. All fund balances would be transferred to the State general fund except, for the fund balance for the Travel Agency Recovery Fund which would be transferred to the Compliance Resolution Fund.

We believe it is prudent to perform a periodical review of non-general funds to ensure that such funds' existence continue to be appropriate and warranted. Funds that no longer meet their original intent or that have lost usefulness or for other valid reasons should be reviewed and evaluated for repeal or termination. This fiscal housekeeping action will also aid and support general fund expenditures.

However, we also recognize that there is legitimate and rational basis or need for the existence of certain non-general funds. To that end, we defer to the departments on specific concerns that they may have regarding this measure, and/or to identify the current operational need or relevance to maintain the practice of some of these revolving and trust funds.

NEIL ABERCROMBIE
GOVERNOR



BRUCE A. COPPA
Comptroller

RYAN OKAHARA
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
WAYS AND MEANS
ON
March 17, 2011
H.B. 79, H.D. 1

RELATING TO STATE FUNDS

Chair Ige and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 79, H.D. 1.

In order to provide the information to the legislature requested in section 8 of H.B. 79, H.D. 1 in an efficient manner, we would suggest that rather than creating another annual report, the information be transmitted either as part of a department's budget testimony package for the 2012 legislature or by revising HRS 37-47 on "Reporting of Non General Fund Information" to include the requirements in section 8. Including the requested information in either document will eliminate the creation of another annual report.

Thank you for the opportunity to submit written testimony on this matter.



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 14, 2011

To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Ways and Means

Date: Thursday, March 17, 2011
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: **Dwight Takamine**, Director
Department of Labor and Industrial Relations

Re: H.B. 79 H.D. 1 Relating to State Funds

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 79 provides for the automatic repeal of certain special or revolving fund on June 30, 2012 and requires agencies to report to the 2012 Legislature on their non-general funds.

II. CURRENT LAW

The Disability Compensation Division administers the following non-general funds:

- Workers' Compensation Special Compensation Fund
 - Purpose. The Workers' Compensation (WC) Special Compensation Fund was established in 1937 under section 386-151 to enhance the employability of persons with pre-existing injuries, reduce discrimination against persons with dependents, and require employers to pay compensation for employees' losses sustained while in their employment. The fund provides compensation benefits to qualifying employees in certain circumstances involving permanent total disability benefit adjustments, subsequent injuries and pre-existing conditions, defaulting employers, total disability under previous laws, concurrent employment, and benefit adjustments for services of attendants. Revenues are from levies on workers' compensation carriers and self-insured employers,

interest income, reimbursements from defaulting employers, unpaid benefits in certain cases, and fines for noncompliance with the WC law.

- Special Fund for Disability Benefits
 - Purpose. The Temporary Disability Insurance (TDI) fund was established in 1969 under Section 392-61 to pay benefits to individuals who become temporarily disabled while unemployed and are ineligible for unemployment insurance benefits. The fund also pays temporary disability benefits to employees who are entitled to benefits but cannot receive them because of employer bankruptcy or employer noncompliance with the TDI law. In 2009, the fund became responsible for paying for the establishment and maintenance of a family leave data collection system under section 398-9.5.

- Premium Supplementation Fund
 - Purpose. The Prepaid Health Care (PHC) Premium Supplementation Fund was established in 1974 under Section 393-41, HRS, to supplement health care insurance premium payments for certain employers with fewer than eight employees. In 1978, prepaid health care benefits coverage was added for employees who are entitled to receive benefits but whose employers are bankrupt or noncompliant with the State's PHC Act.

The Unemployment Insurance Division administers two non-general funds: the unemployment fund and the special unemployment insurance administration fund.

The unemployment fund, under section 383-121, Hawaii Revised Statutes (HRS), was statutorily established in 1937 as a special fund to provide temporary income to unemployed individuals as required by the federal Social Security Act (SSA).

The special unemployment insurance administration (SUIA) fund, under section 383-127, HRS, was statutorily established in 1987 as a special fund to augment federal administrative grants due to reductions in federal funding in order to maintain the level of services to unemployed individuals that is necessary to preserve the quality and integrity of the UI program.

The Workforce Development Division administers the employment and training non-general fund, which was established under section 383-128. The employment and training fund operates to create a more diversified job base, to support industry or employer-specific training programs to address critical shortages in high growth or industry areas, to assist recently or likely to be unemployed workers, to assist residents who do not

otherwise qualify for other federal or state job training programs to overcome employment barriers and to support training programs for job-specific skills for individuals in need of assistance to improve career employment prospects.

III. HOUSE BILL

The Department offers the following **comments** on this measure:

1. Currently, under section 383-126.5, the Department is required to prepare an annual evaluation of the adequacy of the Hawaii Unemployment Compensation Fund balance, which is due to the Legislature no later than 20 days prior to the convening of the regular session.
2. Under section 383-127(f), the Department is required to submit a report to the legislature on the financial status of the SUIA no later than 20 days prior to the convening of the regular session.
3. Under section 383-128(h), the Department is required to submit a report to the legislature on the status of the employment and training fund, including expenditures and program results, at least twenty days prior to the convening of each regular legislative session.
4. It is unclear whether all of the non-general funds under the control of the department will be terminated if one of the non-general funds is not reported on, or whether only the fund that failed to be reported on will be terminated under Section 8 (9)(b) of the proposed measure.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
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EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Thursday, March 17, 2011
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 79 HOUSE DRAFT 1
RELATING TO STATE FUNDS**

TO THE HONORABLE DAVID IGE AND MEMBERS OF THE COMMITTEE:

My name is Keali'i S. Lopez, and I am the Director of Commerce and Consumer Affairs ("DCCA" or the "Department"). The Department would like to offer the following comments on Section 3 of this bill.

SECTION 3 OF HOUSE BILL NO. 79

Section 3 of H.B. No. 79 proposes to terminate certain funds for which the statutory authority has been repealed and deposits the residual amounts in each fund to the general fund.

Pursuant to Act 41, SLH 1994, any amounts that remain in the travel agency recovery fund after payment of educational expenses or for recovery fund claims and

expenses shall become part of the compliance resolution fund for use in travel agency related cases.

These funds were dedicated to specific statutory purposes to serve as a source of monetary recovery for consumers' claims against insolvent travel agencies, educate the licensees who were the contributors to the fund, and support increased government service demands by its licensees. However, based on the State Auditor's Report No. 10-09, the Department is moving forward with closing the Travel Agency Recovery Fund.

We thank the Senate Committee on Ways and Means for this opportunity to present testimony on this matter.

NEIL ABERCROMBIE
GOVERNOR



DENISE M. WISE
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Denise M. Wise
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON WAYS AND MEANS

March 17, 2011 9:00 A.M.
Room 211, Hawaii State Capitol

In consideration of
H.B. 79, H.D. 1
RELATING TO STATE FUNDS

Mister Chair and Members of the Senate Committee on Ways and Means, thank you for the opportunity to provide you with comments regarding House Bill 79 as amended by House Draft 1, relating to state funds.

The Hawaii Public Housing Authority (HPHA) would like to provide informational **comments** regarding the fund referenced in the bill, the Hawaii Public Housing Authority Administration Revolving Fund. This revolving fund is used as a temporary holding account to pay other state agencies for services provided to the HPHA. The fund does not generate revenues, and monies deposited are used to reimburse expenses paid out for the HPHA. At this time, the fund has a \$0 cash balance with a \$2,581,363 appropriation ceiling, so closure of the fund would be General Fund neutral. As such, HPHA is in the process of requesting that the Department of Accounting and General Services close the fund.

The HPHA appreciates the opportunity to provide the Senate Committee on Ways and Means with the agency's comments regarding H.B. 79 H.D. 1. We respectfully request the Committee to take these factors into consideration as it deliberates on this measure.

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Repeal special and revolving funds

BILL NUMBER: HB 79, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends Act 285, SLH 1991, to provide that the travel agency recovery fund be closed on June 30, 2011.

The judiciary shall terminate the administratively established Pulama I Na 'Opio O Hawaii trust fund at the close of business on June 30, 2011.

The Maui region system board, east Hawaii regional board, and the west Hawaii regional board of the Hawaii health systems corporation shall terminate their administratively established collections revolving funds at the close of business on June 30, 2011.

Directs the department of human services to terminate the following administratively established revolving funds or trust funds: (1) federal maximization revolving fund; (2) HPHA administration revolving fund; and (3) Kahikolu 'Ohana O Wai'anae project trust fund at the close of business on June 30, 2011.

Authorizes the director of finance to transfer to the general fund any balances remaining as of June 30, 2011, in the following funds: (1) collections revolving funds; (2) federal maximization revolving fund; (3) health care revolving fund; (4) Hawaii public housing authority administration revolving fund; (5) Kahikolu 'Ohana O Wai'anae project trust fund; (6) Pulama I Na 'Opio O Hawaii trust fund; and (7) teacher's housing operating fund.

Requires each state agency to submit a comprehensive report to the 2012 legislature that identifies every non-general fund under its control or administration. The failure of any state agency to provide a report of the non-general funds under the control or administration of that state agency shall cause that fund to terminate on June 30, 2012 and any unencumbered balance in the fund shall be transferred to the general fund.

EFFECTIVE DATE: Upon approval

STAFF **COMMENTS**: This measure repeals seven special and revolving funds of various state agencies and departments. Due to the state budget shortfall, lawmakers are searching for moneys to cover that shortfall and are tapping the various non-general funds of the state.

It should be noted that the transfer of moneys from special funds to the general fund was found to be unconstitutional. In Hawaii Insurers Council v. Lingle, Hawaii Supreme Court, No. 27840, December 18, 2008, the court found that the transfer of moneys held in a special fund to the general fund was

unconstitutional under the separation of powers doctrine. The court determined that the assessments that were deposited into a special fund were regulatory fees since they were imposed because they were: (1) imposed by a regulatory agency; (2) the agency placed the moneys in a special fund; and (3) the money was not used for a general purpose but to defray expenses generated by the insurers. The transfer of moneys from the special fund to the general fund was unconstitutional because it made the fees collected by the agency for a specific purpose as if they were derived from general tax revenues. The court found that the legislature's bills to transfer the moneys from the special fund to the general fund resulted in an "impermissible blurring of the distinction between the executive power to assess regulatory fees and the legislative power to tax for general purposes." In a preliminary opinion from the state attorney general, transfers from the compliance resolution fund may be unconstitutional, since the transfer of moneys from that fund was the basis for the Hawaii Insurers Council case.

What this measure underscores is the growing problem of "hiding" sums of money in various funds rather than being deposited into the general fund. Prior to the 1990's, special funds were a rarity, limited largely to the transportation activities where special funds had to set those revenues from the highways and airports aside to qualify for matching federal funds. Even the regulatory fees of the department of commerce and consumer affairs went into the state general fund and then were doled out through the appropriations process to cover the operating costs of the various regulatory activities.

However, once specific special funds were created, like those for the insurance industry, funds collected from the industry had to be used to benefit that particular industry. This is where the courts stepped in and ruled in favor of the Hawaii Insurers Council. Had the money gone into the general fund and then be appropriated back to cover the activities, the courts would not have ruled as they did. That's because the oversight was provided by the legislature in determining the appropriateness of not only the fees charged but the expenses of running the program.

It should be remembered that the 1990 legislature directed the State Auditor to evaluate all special and revolving funds as of July 1, 1990 and recommend whether they should be continued or eliminated. The Auditor is also to examine any new or proposed special or revolving funds which would decrease general fund revenues. While the Auditor had a completion date of 1995, the review was completed in 1992. The Auditor's report noted that, "Special funds give agencies full control of these unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. Many experts say that special funds are likely to hamper budget administration. And from a legislative perspective, they are less desirable because they are not fully controlled by the appropriation process."

Given the findings of the Auditor and the current financial crisis, it is quite clear that the creation of numerous special funds has eroded the integrity of state finances. Moneys in special funds are neither subject to the general fund expenditure limitation nor to the close scrutiny that general funds are subject to in the budgeting process. Special funds that earmark general fund revenues cannot be justified as they restrict budget flexibility, create inefficiencies, and lessen accountability.

There is no doubt that carving out portions from the general fund has created the lack of funds lawmakers face each year. Such a shortfall will inevitably lead to a call for tax increases even though money abounds in these special funds. One only has to review the measures introduced each year that set up numerous new special funds or add new fees or charges, the receipts of which are earmarked for special funds, to see the prolific establishment of special funds.

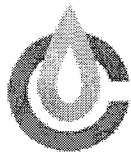
As has been consistently noted, these fees were increased or approved and earmarked for totally irrelevant programs. The result has been this mismatch of either not enough funds to carry out the program or, as in these cases, an excess of funds that then become the target for a raid. Lawmakers should learn a lesson and repeal many of the earmarked sources and their special funds and cease from creating any more new special funds or earmarking any more revenues for such worthy causes.

Finally, these numerous special funds create an even more serious legal problem and that is, the circumvention of the state general fund spending ceiling. Inasmuch as many of the programs which have set up their own special funds used to be beneficiaries of the state general fund, funding of these programs is no longer subject to the general fund spending limit, but had they remain funded with general funds, the growth of these programs would have been measured against the spending limit yardstick. Thus, by spinning these programs off into special fund financing, the growth of government that the constitutional limit was supposed to have measured has become obscured, contributing to the problem that the administration and legislators are trying to address. The bottom line is that state government has grown faster than the economy that is being called upon to support that growth, a formula for self-destruction.

Returning many of these programs to general fund funding will allow lawmakers flexibility in moving resources among programs as priorities dictate and, indeed, it will allow lawmakers to set priorities among the various state programs. No doubt there will be gnashing of teeth as program beneficiaries plead for the salvation of their various special funds, but if lawmakers are to resolve the serious budget shortfall, they need to begin bringing many of these programs back under the control and review of the legislature. If lawmakers continue to condone such special funds, then they might as well earmark all revenues of the state and vote themselves out of existence as there would then be no need for a legislative body to appropriate state funds.

Thus, adoption of this measure is a giant step in regaining control over state finances. These funds should be repealed unless administrators can submit a good legal reason why they should not be repealed. Those programs that have been so blessed in the past will now have to come back each and every year to report about their stewardship of the funds they have been given to run their programs. Lawmakers will have every right to demand evaluation of the program's performance before doling out even more money. This is the very least lawmakers owe their taxpaying constituencies. Returning these programs to general fund financing will improve accountability and transparency.

Some may ask what are some guidelines as to whether or not it is appropriate to repeal a special fund. Funds that should not be repealed are those with legal prohibitions such as a bond reserve fund which is a holding account to repay a debt obligation of the state or a special fund that is under federal mandate such as the 911 wireless fund or the highway special fund. On the other hand, programs that used to be funded out of the general fund, such as the many regulatory programs of the department of commerce and consumer affairs whose user fees are set by statute, should be returned to the general fund. The natural area reserve fund, the land preservation fund, and the affordable rental housing trust fund that are financed with the receipts of the conveyance tax should be returned to the general fund and money from the general fund should be appropriated annually or biennially for those programs. And unlike the reaction of the many constituencies of these special funds, repeal of the special funds is not a death knell for their programs. What the repeal of special funds does is return accountability and transparency to government and allows policymakers to set priorities among programs and services.



Hawai'i State Center for Nursing

Testimony Presented Before the
Senate Committee on Ways and Means
March 17, 2011, 9:00 a.m.

By

Gail P. Tiwanak RN, MBA

Director

Hawaii State Center for Nursing

HB 79, HD1 RELATING TO STATE FUNDS

Chair Ige, Vice Chair Kidani, and members of the Senate Committee on Ways and Means, thank you for this opportunity to provide testimony this bill, HB 79, HD1, to the extent that it relates to Section 8. This section requires that :

- “(a) Not fewer than twenty days prior to the convening of the regular session of 2012, each state agency shall submit a report to the legislature that identifies every non-general fund under its control or administration...
- (b) If any state agency fails to provide a report to the legislature that meets the requirements of subsection (a), the non-general funds under the control or administration of that state agency shall be terminated on June 30, 2012. The director of finance shall transfer to the general fund any unencumbered balance remaining in the non-general fund of that state agency as of June 30, 2012.”

The Hawaii State Center for Nursing (“HSCFN”) has submitted an annual report to the Governor and Legislature since 2005, but seeks clarification whether these reports would meet the requirements of Section 8 (a) of this measure.

Act 198, Session Laws of Hawai'i 2003, established the HSCFN at the University of Hawaii, to conduct research on workforce issues for nurses and other assistive healthcare personnel. The establishment of the HSCFN created a nursing special fund by requiring each nurse to pay an additional fee of \$40 upon the issuance of a new license and at each license renewal period. There are **no state or federal funds** in the HSCFN special fund.

Sweeping the balance of the fund into the state general fund would in essence cause the demise of the HSCFN. The 21,000+ advanced practice registered nurses, registered nurses

and licensed practical nurses would in effect have paid a form of taxation which is not required of any other profession in Hawaii. Decisions relating to health care in Hawai'i is at the critical point where accurate data of workforce issues for nurses and other healthcare personnel is more important than ever.

Therefore, if the current annual reports submitted by the HSCFN do **NOT** meet the requirements of Section 8(a), the HSCFN strongly opposes Section 8 of this bill and asks this Committee that it delete it from HB 79, HD1.

We appreciate your continuing support of nursing and healthcare in Hawai'i. Thank you for the opportunity to testify.

HAWAII SUBSTANCE ABUSE COALITION

Topic: HB79 HD1 Relating to State Funds – Special Funds Repeal

To: COMMITTEE ON WAYS AND MEANS: Senator David Ige, Chair; Senator Michelle Kidani, Vice Chair

When: March 17th, 2011, Thursday, at 9:00 am

Place: Conference Room 211

Aloha Chair Ige, Vice Chair Kidani and Distinguished members. My name is Alan Johnson and I am the Chairperson of the Hawaii Substance Abuse Coalition, a hui of about 20 alcohol and substance abuse treatment agencies in Hawai'i.

HSAC Opposes HB79 for the following Specified Provisions:

While we understand transferring funds to the general fund, we urge the legislature to not end the Drug Demand Reduction Assessments Fund. Since the legislature can transfer funds out of this fund during times of dire need, please continue this special fund so it can accumulate during prosperous years. This special fund does levy fines on DUI offenders that can be used for treatment.

Ultimately, using these funds for treatment is the best use of this special fund as repeating DUI offenders are far more costly to the state than not treating, while treatment is effective at both stopping the offense and saving money for the state.

We appreciate the opportunity to provide information and are available for questions, if needed.



Kahikolu 'Ohana Hale 'O Wai'anae

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3/16/2011

TO: Senator David Y. Ige, Chair WAM
Senator Michelle Kidani, Vice Chair WAM

FR: Michael Kahikina, Executive Director *WK*

Re: Bill No. and Title: **House Bill No. 79 H.D. 1, Relating to State Funds**

Purpose: Repeals, terminates, or closes certain revolving and trust funds. Establishes provisions for automatic repeal of certain special and revolving funds beginning on 6/30/12.

Kahikolu Ohana Hale 'O Waianae (KOHOW) strongly reservations to Section 6 of House Bill No. 79 because this section indiscriminately repeals all special and revolving funds without any regard to their intent and purpose of which it was created.

Specifically, House Bill No. 79 H.D.1 Section 6 (3) terminates revolving funds for Kahikolu Ohana Hale 'O Waianae Transitional and Affordable housing project that was part of the emergency decree to address the rising homeless moving to the Waianae Coast in 2005. The project is in its 5th year of operation and has had many families successfully increase their income and transitioned into their own home. A total of 71 families are served directly with a home and many support services are accessed on property, along with childcare, to help these families transition successfully.

To eliminate this trust fund from the Department of Human Services is still uncertain of how it would effects our operations. With rising cost to do business, lack of meaningful employment for these families to earn a decent wage, and no available affordable housing available to rent will cause more of problem that may cause more financial cost in the future.

I can appreciate the difficult task you all have of balancing the budget and ask that you really research and understand what happen to KOHOW if this fund is eliminated.

Please assure me that we are able to continue to do business and provide the housing needs to these homeless familie?. I appreciate this opportunity to provide this testimony.